

ASSEMBLY BILL

No. 848

Introduced by Assembly Member Patterson

February 21, 2013

An act to amend Sections 8700.5 and 8730 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as introduced, Patterson. Adoption.

Existing law prescribes the procedures for the relinquishment of a child to the State Department of Social Services or a licensed adoption agency for adoption, and requires the relinquishment to be signed and acknowledged before specified persons. Existing law specifies certain time periods during which a birth parent may revoke a relinquishment for adoption, but also provides that a birth parent may elect to sign a waiver of the right to revoke relinquishment in the presence of specified persons. Existing law requires that if the waiver is signed in the presence of an authorized representative of a private licensed adoption agency, the relinquishment becomes final and irrevocable at the close of the next business day.

This bill would additionally provide that if the waiver is signed in the presence of an authorized representative of a private licensed adoption agency, the relinquishment becomes final and irrevocable at either the close of the next business day or at the close of the next business day after expiration of any holding period specified in writing, whichever is later. The bill would also provide that the waiver of the right to revoke relinquishment is invalid if the relinquishment is determined to be invalid, is revoked during any holding period specified in writing, or is rescinded, as specified.

Under existing law, at the discretion of the department, county adoption agency, or a licensed adoption agency, an abbreviated assessment or home study of the prospective adoptive parent may be performed, as provided, if the prospective adoptive parent of a child is a foster parent with whom the child has lived for a minimum of 6 months or a relative caregiver who has had an ongoing and significant relationship with the child.

This bill would permit an abbreviated assessment or home study for a licensed or certified foster parent with whom the child has lived for a minimum of 6 months, an approved relative caregiver or nonrelated extended family member with whom the dependent child has had an ongoing and significant relationship, a court-appointed relative guardian of the child, as specified, or a prospective adoptive parent who has completed an agency-supervised adoption within the last 2 years.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8700.5 of the Family Code is amended
2 to read:
3 8700.5. (a) A relinquishing birth parent may elect to sign a
4 waiver of the right to revoke relinquishment in the presence of any
5 of the following:
6 (1) A representative of the department or the delegated county
7 adoption agency, or any public adoption agency of another state.
8 (2) A judicial officer of a court of record, within or outside of
9 California, if the birth parent is represented by independent legal
10 counsel.
11 (3) An authorized representative of a licensed private adoption
12 agency within or outside of California, including a representative
13 of the adoption agency that witnessed or accepted the
14 relinquishment, if the birth parent is represented by independent
15 legal counsel.
16 (b) The waiver of the right to revoke relinquishment may not
17 be signed until the department, delegated county adoption agency,
18 or public adoption agency of another state has completed an
19 interview, unless the waiver is signed in the presence of a judicial
20 officer of a court of record of any state or an authorized
21 representative of a private adoption agency licensed within or

outside of California. If the waiver is signed in the presence of a judicial officer, the interview and witnessing of the signing of the waiver shall be conducted by the judicial officer. If the waiver is signed in the presence of an authorized representative of a licensed adoption agency, the interview shall be conducted by the independent legal counsel for the birth parent or parents, who shall:

(1) Review the waiver with the birth parent or parents.
 (2) Counsel the birth parent or parents about the nature of the intended waiver.

(3) Sign and deliver to the birth parent or parents and the licensed adoption agency a certificate in substantially the following form:

“I, (name of attorney), have counseled my client, (name of client), about the nature and legal effect of the waiver of the right to revoke the relinquishment for adoption. I am so disassociated from the interest of the prospective adoptive parent(s) and the licensed adoption agency as to be in a position to advise my client impartially and confidentially as to the consequences of the waiver. My client is aware that California law provides an indeterminate period, usually 2 to 10 business days, during which a birth parent may revoke a relinquishment for adoption. On the basis of this counsel, I conclude that it is the intent of my client to waive the right to revoke, and to make a permanent and irrevocable relinquishment for adoption. My client understands that upon signing this waiver, he or she will not be able to regain custody of the child unless the prospective adoptive parent or parents agree to withdraw the petition for adoption or the court denies the adoption petition.”

(c) If the placing birth parent signs the waiver in front of a judicial officer or the department, the relinquishment shall become final and irrevocable at the time the waiver is signed. If the waiver is signed in the presence of an authorized representative of a private licensed adoption agency, the relinquishment shall become final and irrevocable at the close of the next business day *after the relinquishment was signed, or at the close of the next business day after expiration of any holding period specified in writing, whichever is later.*

(d) The licensed adoption agency shall submit the waiver and certificate to the department with the relinquishment, unless the relinquishment was submitted to the department before the waiver was signed, in which case the waiver and certificate shall be submitted to the department no later than two business days after signing.

(e) A waiver executed pursuant to this section shall be void if any of the following occur:

(1) The relinquishment is determined to be invalid.

(2) The relinquishment is revoked during any holding period specified in writing.

(3) The relinquishment is rescinded pursuant to Section 8700.

(f) Nothing in this section limits the birth parent's right to rescind the relinquishment pursuant to Section 8700.

SEC. 2. Section 8730 of the Family Code is amended to read:

~~8730. If the prospective adoptive parent of a child is a foster parent with whom the child has lived for a minimum of six months or a relative caregiver who has had an ongoing and significant relationship with the child, an assessment or home study of the prospective adoptive parent may, at the discretion of the department, county adoption agency, or a licensed adoption agency, or unless the court with jurisdiction over the child orders otherwise, require only the following:~~

8730. (a) Unless otherwise ordered by a court with jurisdiction over the child, the department or licensed adoption agency has the discretion to provide an abbreviated home study assessment for any of the following:

(1) A licensed or certified foster parent with whom the child has lived for a minimum of six months.

(2) An approved relative caregiver or nonrelated extended family member with whom the child has had an ongoing and significant relationship.

(3) A court-appointed relative guardian of the child, if the guardian has been investigated and approved pursuant to the guardianship investigation process and has had physical custody of the child for at least one year.

(4) A prospective adoptive parent who has completed an agency-supervised adoption within the last two years.

(b) Home study assessments completed pursuant to subdivision (a) shall require only the following:

1 (a)

2 (1) A criminal records check of the ~~relative caregiver or foster~~
3 ~~parent~~ *applicant*, as provided in subdivision (a) of Section 8712.

4 (b)

5 (2) A determination that the ~~relative caregiver or foster parent~~
6 *applicant* has sufficient financial stability to support the child and
7 ensure that any adoption assistance program payment or other
8 government assistance to which the child is entitled is used
9 exclusively to meet the child's needs. In making this determination,
10 the experience of the ~~relative caregiver or foster parent~~ *applicant*
11 only while the child was in his or her care shall be considered. For
12 purposes of this section, the ~~relative caregiver or foster parent~~
13 *applicant* shall be required to provide verification of employment
14 records or income or both.

15 (c)

16 (3) A determination that the ~~relative caregiver or foster parent~~
17 *applicant* has not abused or neglected the child while the child has
18 been in his or her care and has fostered the healthy growth and
19 development of the child. This determination shall include a review
20 of the disciplinary practices of the ~~relative caregiver or foster parent~~
21 *applicant* to ensure that the practices are age appropriate and do
22 not physically or emotionally endanger the child.

23 (d)

24 (4) A determination that ~~there is not a likelihood that the relative~~
25 ~~caregiver or foster parent will~~ *the applicant is not likely to* abuse
26 or neglect the child in the future, that the ~~caregiver or foster parent~~
27 *applicant* can protect the child, ensure necessary care and
28 supervision, and foster the child's healthy growth and development.

29 (e)

30 (5) A determination that the ~~relative caregiver or foster parent~~
31 *applicant* can address racial and cultural issues that may affect the
32 child's well-being.

33 (f)

34 (6) An interview with the ~~relative caregiver or foster parent~~
35 *applicant*, an interview with each individual residing in the home,
36 and an interview with the child to be adopted.